

RESUBMITTED Petition which was originally sent  
Case: 5:21-cv-01985-GEF Doc #: 93 Filed: 02/01/23 1 of 15 PageID #: 1491  
On 10-19-22, AMENDED CLAIMS.

AO 241 (Rev. 09/17)

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

(ACTUAL  
Innocence)

United States District Court	District: <b>NORTHERN</b>	
Name (under which you were convicted): <b>JOHN C. COLEMAN</b>	FILED <b>FEB 01 2023</b>	Docket or Case No.: <b>5:21-cv-01985</b>
Place of Confinement : <b>MANSFIELD CORR. INSTITUTION</b>	CLERK U.S. DISTRICT COURT NORTHERN DISTRICT OF OHIO CLEVELAND	Prisoner No.: <b>A761279</b>
Petitioner (include the name under which you were convicted) <b>JOHN C. COLEMAN</b>	Respondent (authorized person having custody of petitioner) <b>v. WARDEN TIM MC CONAHAY</b>	
The Attorney General of the State of: <b>DAVE YOST</b>		

**Liberally Construed;**

**PETITION**

(Evidentiary  
Hearing  
Demandec)

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

The Court of Common Pleas Summit County, Ohio

2. (b) Criminal docket or case number (if you know): 2018-01-0287

2. (a) Date of the judgment of conviction (if you know): 3-8-19

(b) Date of sentencing: 3-8-19

3. Length of sentence: 8 years

4. In this case, were you convicted on more than one count or of more than one crime?  Yes  No

5. Identify all crimes of which you were convicted and sentenced in this case: Count One Burglary  
2911.12 (A)(2) 4 years; Count two Burglary 2911.12 4 years.

See Journal Entry and Declaration  
Attached.

6. (a) What was your plea? (Check one)

(1) Not guilty  (3) Nolo contendere (no contest)

(2) Guilty  (4) Insanity plea

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

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(c) If you went to trial, what kind of trial did you have? (Check one)

Jury  Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes  No

8. Did you appeal from the judgment of conviction?

Yes  No

9. If you did appeal, answer the following:

(a) Name of court: Court of Appeals Ninth Judicial District

(b) Docket or case number (if you know): 2018-BI-0287 - 29360

(c) Result: Assignment of error overruled

(d) Date of result (if you know): May 6, 2020

(e) Citation to the case (if you know): \_\_\_\_\_

(f) Grounds raised: Appellant COLEMAN was tried, convicted, and Sentenced on two counts of Burglary, R.C. 2911.12 (A)(2), in violation of his Constitutional and Statutory rights to a Speedy trial.

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(g) Did you seek further review by a higher state court?  Yes  No

If yes, answer the following:

(1) Name of court: The Supreme Court of Ohio

(2) Docket or case number (if you know): 20-0724

(3) Result: The Court declined to accept jurisdiction of the appeal pursuant to S.Ct. Prac.R. 7.08 (B)(4).

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(4) Date of result (if you know): 8-4-2020

(5) Citation to the case (if you know): 6th Amendment under U.S. Const. was violated.

(6) Grounds raised: Mr. COLEMAN was arrested and charged with two counts of Burglary on 1-26-2018 and brought to trial on 3-5-19 403 days later. The entire time Mr. COLEMAN an innocent man was held in jail, in violation of his 6<sup>th</sup> and 14<sup>th</sup> Amendment.

(h) Did you file a petition for certiorari in the United States Supreme Court?  Yes  No

If yes, answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?  Yes  No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: The Court of Appeal Ninth Judicial District

(2) Docket or case number (if you know): 24360

(3) Date of filing (if you know): 7-28-2020

(4) Nature of the proceeding: Application to reopen appeal pursuant to App.R. 26(b)

(5) Grounds raised: Counsel was ineffective for not arguing Mr. Coleman's Constitutional speedy trial violation supported by Constitutional case law supporting his argument that Mr. Coleman's Constitutional right to a speedy trial was violated, Counsel was ineffective for not presenting issues to the Court of Appeals. Trial court erred in denying Appellant's motion for Acquittal/Sufficient Evidence, Manifest Weight of the Evidence, Trial judge erred by not instructing the jury on lesser included offense, imposing consecutive sentences without stating the findings, Counsel was ineffective for not submitting important transcripts in the court of appeals, ineffective assistance of trial counsel.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes  No

(7) Result: Court denied to reopen appeal. 2 judges concur, 1 judge dissent.

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(8) Date of result (if you know): 11-19-2020

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: ██████████ The Court of Common Pleas Summit County, Ohio(2) Docket or case number (if you know): 2018-01-0287

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: Post-conviction / Petition To Vacate Conviction or Sentence(5) Grounds raised: Mr. Coleman's 4th Amendment was violated when two detectives from the Akron Police Department assaulted ~~██████████~~ by forcefully taking ~~██████████~~ Mr. Coleman's DNA to create database, because Mr. Coleman's DNA was already in the System. The DNA test was used in trial to help convicted Mr. Coleman. Mr. Coleman never had a definitive DNA test due to ineffective assistance of trial counsel.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

 Yes  No(7) Result: Denied(8) Date of result (if you know): 5-14-21

(c) If you filed any third petition, application, or motion, give the same information:

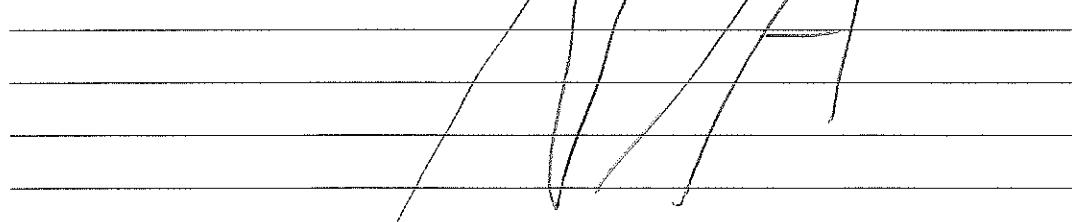
(1) Name of court: N/A

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_



(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes  No

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition:  Yes  No

(2) Second petition:  Yes  No

(3) Third petition:  Yes  No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

Never was severed journal entry stating findings and facts.

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

**CAUTION:** To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

**GROUND ONE:** Constitutional right to a speedy trial was violated under the Sixth and Fourteenth Amendment to the U.S. Constitution.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Mr. Coleman was arrested on 1-26-18; trial did not begin until Mar. 5, 2019, 403 days later. The State and trial court vacated trial four (4) times throughout the entire proceeding; while Mr. Coleman an innocent man sat in jail. The delays caused Mr. Coleman and his counsels to get in several disputes about Mr. Coleman sitting in jail destroying his entire defense. The delay hindered his ability to gather witnesses, Mr. Coleman constantly asserted his right to a speedy trial. Mr. Coleman's case meets the Balance Test under Barker v. Wingo, 407 U.S. 514, 532, 92 S. Ct 2529, 2533 L.Ed. 2d 75.

(b) If you did not exhaust your state remedies on Ground One, explain why: See doc # 75 Notice

of Cause and Prejudice.

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(c) **Direct Appeal of Ground One:**(1) If you appealed from the judgment of conviction, did you raise this issue?  Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

*N/A*(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

 Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

*N/A*

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?  Yes  No(4) Did you appeal from the denial of your motion or petition?  Yes  No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?  Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

*N/A*

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

*N/A*

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: None

**GROUND TWO:** Insufficient evidence to support the elements of both Counts of Burglary 2911.12(a)(2) in violation of the Fourteenth Amend. of the U.S. Constitution.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The State did not present any evidence supporting the elements "force", "trespass ~~In~~" "with purpose to commit in either habitation any criminal offense". To legally convict Mr. Coleman, the State was required to prove that Mr. Coleman committed all the elements of Burglary as defined by R.C. 2911.12(a)(2); which that state failed to ~~to~~ prove. The record is devoid of evidence proving the critical elements defining the charges Burglary 2911.12(a)(2). Mr. Coleman's conviction is unjustified in violation of the Fourteenth Amendment to the U.S. Constitution. Mr. Coleman's case meets the standards set out under *Jackson v. Virginia*, 443 U.S. 372, *Thompson v. Louisville*, 362 U.S. 188, *In re Winship*, 397 U.S. 358

(b) If you did not exhaust your state remedies on Ground Two, explain why: See Doc # 75 Notice

of Cause and Prejudice.

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?  Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: None

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: None

Name and location of the court where the motion or petition was filed: None

Docket or case number (if you know): None

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Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?  Yes  No

(4) Did you appeal from the denial of your motion or petition?  Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?  Yes  No

(6) If your answer to Question (d)(4) is "Yes," state: \_\_\_\_\_

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: \_\_\_\_\_

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: \_\_\_\_\_

**GROUND THREE: Ineffective Assistance of Counsel in violation of the Sixth Amendment under the United States Constitution.**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Counsel was ineffective for allowing the State and State trial Court to violate Mr. Coleman's speedy trial right, Counsel withdrew Mr. Coleman's suppression hearing, Counsel allowed an edited video and an inconsistent statement to be used at trial, Appeal counsel did not articulate Mr. Coleman's appeal brief by arguing that Mr. Coleman's Constitutional right to a speedy trial was violated supported by Constitutional case law, nor did his Appeal counsel submit important transcripts to the Court, argue Insufficient Evidence, Ineffective Assistance of Counsel. Mr. Coleman's case meets the standards under Strickland v. Washington, Washington v. Strickland, 693 F.2d 1243.

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(b) If you did not exhaust your state remedies on Ground Three, explain why: See DDC# 75 Notice of Cause and Prejudice.

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?  Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?  Yes  No

(4) Did you appeal from the denial of your motion or petition?  Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?  Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

N/A

**GROUND FOUR:** Brady Violation in violation of the Fourteenth Amendment under the U.S. Constitution.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

During trial the State's witnesses Robert Patrick an officer for the Akron Police Department and Russell Bassett also an officer for the Akron Police Department testified about a portion of the edited video that they alleged to have seen, was not provided to Mr. Coleman nor the jury. The State withheld the statement by witness Tanisha Bowe Son's father that made Mr. Coleman a suspect in count 2 Burglary Not a CODIS hit. Mr. Coleman's case meets standards under Brady v. Maryland, 378 U.S. 83

(b) If you did not exhaust your state remedies on Ground Four, explain why:

See Doc # 75 Notice

of Cause and Prejudice.

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

N/A

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Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion or petition?  Yes  No

(4) Did you appeal from the denial of your motion or petition?  Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?  Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

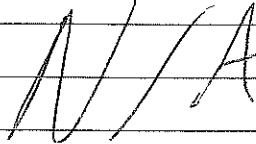
(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

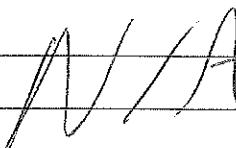
(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: N/A

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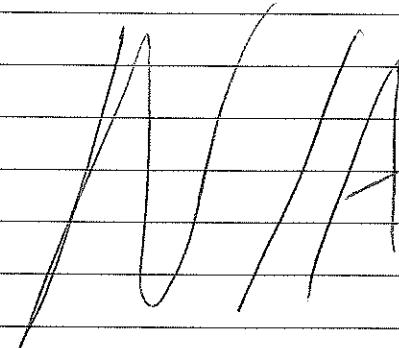
13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction?  Yes  No

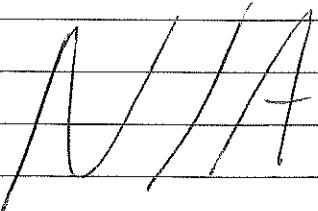
If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: 

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: 

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition?  Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. 

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging?  Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. 

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: I never had one; nor did I waive it in writing. (Please see Court docket 2018-01-0287)

(b) At arraignment and plea: Edward Smith : Address unknown.

(c) At trial: Annette Powers : 1655 W. Market St.  
Suite 420 Akron, Oh 44313

(d) At sentencing: Annette Powers : 1655 W. Market St.  
Suite 420 Akron, Oh 44313

(e) On appeal: Nicholas Sivcycdenko : P.O. Box 3952  
Cuyahoga Falls, Oh 44223

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging?  Yes  No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future?  Yes  No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\*

N/A

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

Conviction be overturned/reversed, Petitioner be released from prison.

or any other relief to which petitioner may be entitled.

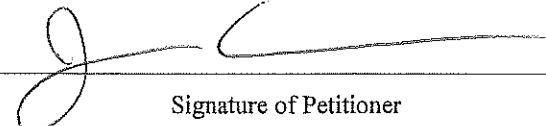
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Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 10-19-22 (month, date, year).

Executed (signed) on 10-19-22 (date).

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Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

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